

Chapter DFI-Sec 1

TITLE AND DEFINITIONS

DFI-Sec 1.01 Short title.

DFI-Sec 1.02 Definitions.

Note: Chapter SEC 1 was renumbered Chapter DFI-Sec 1 under s. 13.93 (2m) (b) 1., Stats. and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, December, 1996, No. 492.

DFI-Sec 1.01 Short title. These rules shall be known and may be cited as the “rules of the division of securities.”

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70.

DFI-Sec 1.02 Definitions. In ch. 551, Stats., and chs. DFI-Sec 1 to 36 and unless the context otherwise requires:

(1) With respect to advertising as referenced in s. 551.202 (24) and (25), Stats., and s. DFI-Sec 2.01 (4) and (5):

(a) “Publication” means:

1. Advertising printed in any newspaper, magazine, periodical or other publication and mailed or delivered to its subscribers or addressees, or communicated by radio, television or other electronic means, including via the internet; or

2. Seminars or meetings whose attendees have been invited by any general solicitation or general advertising;

(b) “Circulation” means advertising mailed, delivered or communicated in substantially similar form to more than 10 persons in this state (exclusive of persons designated under s. 551.102 (11), Stats.), except that the distribution of written offering materials in the form of a confidential memorandum or other offering or disclosure document in connection with an offering exempt from registration under s. 551.202 (13) (a), (am) and (24), Stats., or s. DFI-Sec 2.029 shall not be deemed circulation; and

(2) “Broker-dealer” as defined in s. 551.102 (4), Stats., does not include:

(a) A pension or profit sharing trust, when effecting transactions for its own account.

(b) A registered investment adviser or federal covered investment adviser when placing orders for the accounts of its clients in accordance with rules prescribed by the division, provided that no commission or other remuneration is received by the investment adviser solely for placing the orders.

(c) Any financial institution which by contract, agreement or other means associates with a broker-dealer registered in Wisconsin or by the broker-dealer provides securities services on the premises of the financial institution in accordance with s. DFI-Sec 4.05 (8).

(d) A personal representative, guardian, conservator or pledgee.

(e) A person whose dealings in securities are limited to transactions exempt by s. 551.202 (11), Stats.

(f) A person registered as a real estate broker under ch. 452 and whose transactions in securities are isolated transactions incidental to that business.

(3) “Purchase” of a security includes every purchase, acquisition or exchange, and every contract of purchase of, or contract to purchase, a security or interest in a security for value.

(4) An “offer to sell” within the meaning of s. 551.102 (26), Stats., is involved, so far as the security holders of an issuer are concerned, if there is submitted to the vote of the security holders a proposal, plan or agreement for:

(a) A reclassification of securities of such issuer which involves the substitution or exchange of a security for another security;

(b) A statutory merger or consolidation in which securities of the issuer will become or be exchanged for securities of any other issuer;

(c) A transfer of assets of the issuer to another person in consideration of the issuance of securities of the other person or any of its affiliates; or

(d) A sale of securities of the issuer to another person in consideration of the issuance or transfer to such issuer of securities of the other person or any of its affiliates.

(5) “Transact business” as used in ch. 551, Stats., includes:

(a) For purposes of ss. 551.401 (1) and 551.402 (1), Stats., effecting or attempting to effect transactions in securities for the account of any person in this state through the United States mail, by telephone or by other means from outside or from within this state;

(b) For purposes of ss. 551.403 (1) and 551.404 (1), Stats., advising any person in this state through the United States mail, by telephone or by other means from outside or from within this state as to the value of securities, the advisability of investing in, purchasing or selling securities, or issuing analyses or reports concerning securities to any person in this state through the United States mail, by telephone or by other means; and

(c) Except as provided under s. DFI-Sec 5.12, for purposes of ss. 551.401 (1), 551.402 (1), 551.403 (1) and 551.404 (1), Stats., soliciting any person in this state through the United States mail, by telephone or by other means from outside or from within this state to become a customer, client or subscriber of the person on whose behalf the soliciting is performed.

(7) “Branch office” has the same meaning as “place of business” in s. 551.102 (21), Stats.

(8) An “institutional investor” within the meaning of ss. 551.102 (11) and 551.202 (13) (a), Stats., includes:

(a) An endowment or trust fund of a charitable organization specified in section 170 (b) (1) (A) of the Internal Revenue Code;

(b) An issuer which has any class of securities registered under section 12 of the Securities Exchange Act of 1934, and any wholly owned subsidiary thereof;

(c) A venture capital company as a result of meeting any of the following requirements:

1. Operating a small business investment company licensed under the small business investment act of 1958, as amended 15 USC 631.

2. Being a corporation, partnership, limited liability company or association whose net assets exceed \$1,000,000 and either whose principal purpose as stated in its articles, by-laws or other organizational instruments is investing in securities, or whose primary business is investing in developmental stage companies or eligible small business companies as defined in the regulations of the small business administration at 13 CFR 108.2.

(d) Any “qualified institutional buyer” as defined and listed in section 230.144A under the securities act of 1933 as amended inclusive to October 22, 1992, whether acting for its own account

or the accounts of other qualified institutional buyers that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the qualified institutional buyer.

(e) Any entity, all of the equity owners of which are persons designated in s. 551.202 (13) (a), Stats., or rules thereunder, acting for its own account in the account solely of other persons designated in s. 551.202 (13) (a), Stats., or rules thereunder.

(f) Any "accredited investor" as defined and listed in section 230.501 (a) (1), (2), (3) or (7) under Regulation D under sections 3 (b) and 4 (2) of the securities act of 1933.

(g) The state or any of its agencies or political subdivisions.

(h) The federal government or any of its agencies or instrumentalities.

(9) "Securities services" includes but is not limited to the acceptance of orders to effect securities transactions as agent for the purchaser or seller. "Securities services" does not include exclusively promotional or account-establishing functions subject to s. DFI-Sec 4.05 (8).

(10) For purposes of s. 551.102 (15) (b) and (c), Stats., a person's activities that come within the definition of "investment adviser" are not "performed solely incidental" either to the practice of his or her profession or the conduct of his or her business if the person holds himself or herself out generally to the public as being a financial or investment planner, consultant, adviser or similar designation by means of advertisements, cards, signs, circulars, letterheads or similar means.

(11) For purposes of determining availability of the registration exemption of s. 551.201 (1) (a), Stats., in connection with the offer or sale of a revenue obligation issued or guaranteed by the United States, any state, any political subdivision of a state or any agency or other instrumentality of any of the foregoing, a "non-governmental industrial or commercial enterprise" is not present if:

(a) The source, under a lease, sale or loan arrangement, for payment of principal and interest on the revenue obligation, is a duly organized and existing not-for-profit corporation under applicable state law and is an organization described in section 501 (c) (3) of the internal revenue code which qualifies for exemption from federal taxation under section 501 (a) of the internal revenue code; and

(b) The receipt of a limited amount of revenue by the corporation from commercial or retail sources does not result in a loss of the corporation's status as a qualifying organization under sections 501 (a) and (c) (3) of the internal revenue code.

(12) "Cash," "funds," or "money" as used in ch. 551, Stats., and rules thereunder includes, but is not limited to, all types of currency, checks, drafts, bank deposits or their equivalents.

(13) An "offer" for purposes of use of the registration exemption in s. 551.202 (14), Stats., does not include presentations made at an organized venture capital fair or other investment forum designated in writing by the division pursuant to s. DFI-Sec 2.02 (9) (k).

(14) The following defined terms apply for purposes of the definition of "investment adviser representative" in s. 551.102 (16), Stats.:

(a) "Client" has the definition as that set forth in rule section 203(b)(3)1 under the Investment Advisers Act of 1940, except that "client" does not include persons that are not residents of the United States.

(b) "Supervised person" means any of the following:

1. Any partner, officer or director of, or other person occupying a similar status or performing similar functions for, an investment adviser or federal covered investment adviser.

2. Any employee of an investment adviser or federal covered investment adviser, except for clerical or ministerial employees.

3. Any other person who provides investment advice on behalf of an investment adviser and is subject to the supervision and control of the investment adviser or federal covered investment adviser.

(c) "Third party solicitor" means a person soliciting clients on behalf of a registered investment adviser or a federal covered investment adviser who is neither a partner, officer, director, or employee of the adviser, nor a supervised person of that adviser.

(d) "Investment adviser representative" as defined in s. 551.102 (16), Stats., does not include a supervised person of an investment adviser or federal covered investment adviser that does not have more than 5 natural persons as clients in the United States who are not excepted persons.

(18) "Sponsor" for purposes of a wrap fee program means a broker-dealer or investment adviser that is compensated under a wrap fee program for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, other investment advisers in the program.

(19) "Wrap fee program" means a program under which a specified fee or fees, not based directly upon transactions in a client's account, are charged for investment advisory and brokerage services, which may include portfolio management or advice concerning the selection of other investment advisers and the execution of client transactions.

(20) "Entering into" for purposes of an investment advisory contract, does not include an extension or renewal of an existing contract that does not contain any material changes.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; r. and recr., Register, August, 1972, No. 200, eff. 9-1-72; am. (1), r. and recr. (4) and (5), cr. (6) and (7), Register, December, 1977, No. 264, eff. 1-1-78; am. (1) (intro.), (2) (b) (4) and (6) (a), Register, December, 1980, No. 300, eff. 1-1-81; am. (7), Register, December, 1983, No. 336, eff. 1-1-84; emerg. am. (1) (b), eff. 1-1-84; am. (1) (b), Register, May, 1984, No. 341, eff. 6-1-84; am. (1) (a), cr. (2) (c), (8) and (9), r. and recr. (5), Register, December, 1984, No. 348, eff. 1-1-85; correction in (2) (a) made under s. 13.93 (2m) (b) 12., Stats., Register, December, 1985, No. 360; am. (6) (a), Register, December, 1986, No. 372, eff. 1-1-87; cr. (10), Register, December, 1987, No. 384, eff. 1-1-88; cr. (11), Register, December, 1990, No. 420, eff. 1-1-91; renum. (7) to be (7) (a) and am., cr. (7) (b), Register, December, 1991, No. 432, eff. 1-1-92; am. (5) (c), (7) (a), cr. (12), (13), Register, December, 1994, No. 468, eff. 1-1-95; correction in (13) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 1997, No. 495; emerg. am. (2) (b), (5) (c) 2. (intro.), a. and (7) (b), cr. (5) (c) 2. d., (14) to (18), eff. 7-9-98; am. (2) (b), (5) (c) 2. (intro.), a. and (7) (b), cr. (5) (c) 2. d., (14) to (18), Register, December, 1998, No. 516, eff. 1-1-99; correction in (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1999, No. 524; am. (1) (a) 1., renum. (18) to be (14) (g), Register, December, 1999, No. 528, eff. 1-1-00; emerg. cr. (18) to (21), eff. 1-1-01; CR 01-025: cr. (18) to (21), Register July, 2001, No. 547, eff. 8-1-01; corrections in (1) (intro.) and (14) (g) made under s. 13.93 (2m) (b) 7., Stats.; CR 04-074: renum. (17) to be DFI-Sec 5.035 (4) (a) and r. and recr., renum. (18) to (21) to be (17) to (20) Register December 2004 No. 588, eff. 1-1-05; **CR 08-077: (8) renum. from DFI-Sec 2.02 (4) and am. (8) (intro.) and (e), am. (1) (intro.), (b), (2) (intro.) to (c), (4) (intro.), (5) (a), (b), (10), (11) (intro.), (13), (14) (intro.), (a) and (f), cr. (2) (d) to (f), (8) (g) and (h), renum. (5) (c) 1. and (14) (e) to (g) to be (5) (c) and (14) (b) to (d) and am., r. (1) (c), (5) (c) 2., (6), (8), (14) (b) to (d), and (15) to (17), r. and recr. (7), Register December 2008 No. 636, eff. 1-1-09.**